

IN THE INCOME TAX APPELLATE TRIBUNAL
“SMC – C” BENCH : BANGALORE

BEFORE SHRI N.V. VASUDEVAN, VICE PRESIDENT

ITA No.28/Bang/2022
Assessment year : 2018-19

Kanakashree Charitable Trust, 120, MIG, K H B Colony, II Stage, Basaveshwaranagar, Bangalore – 560 079. PAN: AACTK 2998K	Vs.	The Income Tax Officer (E), Ward 1, Bengaluru.
APPELLANT		RESPONDENT

Appellant by	:	Shri Suresh P R, CA
Respondent by	:	Shri Ganesh R. Ghale, Standing Counsel for Dept.

Date of hearing	:	26.07.2022
Date of Pronouncement	:	26.07.2022

ORDER

This appeal by the assessee is against the order dated 26.11.2021 of the National Faceless Appeal Centre (NFAC), Delhi relating to assessment year 2018-19.

2. The assessee is a charitable trust registered u/s. 12A of the Income-tax Act, 1961 [the Act]. The assessee received voluntary contribution of Rs.1,05,33,000 out of which a sum of Rs.30,33,000 was received as building fund donation and the remaining Rs.75 lakhs was received as Government grants. With regard to Rs.30,33,000 received as building fund donation, the assessee received a sum of Rs.10 lakhs from one Mr. Krishna Palemar. The assessee gave PAN and address of the donor and submitted that the donation was received by cheque. With

regard to remaining sum of Rs.20,33,000 which was donation received in cash, the assessee could not furnish any information. In these circumstances, the AO treated the sum of Rs.30,33,000 as anonymous donation and brought the same to tax as per the provisions of section 115BBC of the Act as follows:-

Total donations received by the assessee		
including government grant of	75,00,000	
Donation received from others	30,33,000	1,05,33,000
Anonymous donation as discussed above		30,33,000
Calculation of anonymous donations as per section 115BBC		
5% of total donations of Rs.1,05,33,000	5,26,650	
OR		
Aggregate anonymous donation in excess of Rs.1,00,000	29,33,000	
Whichever is higher	29,33,000	
Amount to be taxed at 30%		Rs.29,33,000

3. Before the CIT(Appeals), the assessee submitted that due to COVID the confirmation from Krishna Palemer could not be filed and the same is being filed along with appeal papers(i.e., alongwith Form No.35). The CIT(Appeals), however, took cognizance only of the written submissions and found that no confirmation or other details from Krishna Palemar was filed. Even in respect of other donors, no details were filed and therefore the CIT(A) confirmed the order of the AO. Aggrieved against the order of the CIT(Appeals), the assessee is in appeal before the Tribunal.

4. Before the Tribunal, the assessee has restricted his claim only with regard to the sum of Rs.10 lakhs received from Krishna Palemar. In this regard, the assessee has submitted that Mr. Krishna Palemar's confirmation letter dated 2.3.2021 was obtained and attached along with Form 35 filed on 3.3.2021. The CIT(Appeals) has considered only the written submission and overlooked the attachment of the confirmation of

Mr. Krishna Palemar to the Form 35. However, the CIT(Appeals) dismissed the appeal with the following observations:-

“However, on perusal of the various documents uploaded by the assessee along with the written submissions, it is observed that neither any such confirmation letter from the donor, nor the source of funds of the donor has been enclosed, as claimed by the assessee. There is no such Annexure-2, uploaded by the assessee.”

5. The Id. counsel for the assessee submitted that the confirmation of the donor is filed as part of the Appeal in Form 35 which has not been considered by the CIT(Appeals). Copy of Form 35 and the confirmation from Mr. Krishna Palemar is placed on record.

6. After considering the submissions of the assessee and the annexures along with written submissions, it is clear that the confirmation of Mr. Krishna Palemar had been uploaded along with Form 35, whereas this has not been taken cognizance by the CIT(Appeals) and since this was not even filed before the AO, I deem it fit and proper to set aside the issue of anonymous donation of Rs.10 lakhs to AO for fresh consideration. The AO will consider the issue *de novo* in the light of the confirmation filed by the assessee in accordance with law, after affording the assessee opportunity of being heard.

7. The appeal of the assessee is accordingly treated as allowed for statistical purposes.

Pronounced in the open court on this 26th day of July, 2022.

Sd/-
(N.V. VASUDEVAN)
VICE PRESIDENT

Bangalore,
Dated, the 26th July, 2022.
/ Desai Smurthy /

Copy to:

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR, ITAT, Bangalore.
6. Guard file

By order

Assistant Registrar
ITAT, Bangalore.